IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.1034 OF 1999

IN

ARBITRATION PETITION NO.33 OF 1998

...

The State Trading Corporation
of India Ltd. ...Appellant

v/s.

Nav Maharashtra Chakan Oil Mills...Respondent

...

Mr.M.C.Arvind i/b Juris Consultants for the Appellant.

Mr.Tejas Deshpande for the Respondent.

...

CORAM: D.K.DESHMUKH,

J.H.BHATIA & J**J.**

DATED: 5TH JULY, 2007

P.C.:

1. By this appeal the Appellant challenges the order dated 15-6-1999 passed in Arbitration Petition No.33 of 1998. That petition was filed under the Arbitration Act, 1940 raising objections to the award made by the learned arbitrator directing the Appellant to pay damages to the Respondent. The learned single Judge has rejected the objections and the award was made rule of the court.

2. The learned Counsel appearing for the Appellant submits that there were proceeding between the same parties in relation to the similar contract between the parties. In those proceedings, an award was made on 23-1-1995, where the learned Arbitrator declined to make any award for payment of damages. According to the learned Counsel that award was brought before the learned Arbitrator, who decided this matter, but the learned Arbitrator recorded a finding contrary to the finding recorded in the earlier award. That award was also pointed out to the learned single Judge, but the learned single Judge disposed of that

submission by saying that the arbitrator has rightly considered the impact of the award dated 23-1-1995. According to the learned Counsel in view of the previous award, which was not challenged by the Respondent a different view of the matter could not have been taken.

3. The previous award to which the reference is made is of January, 1995. The Appellant filed its reply before the learned Arbitrator in June, 1995. Perusal of the reply shows that the previous award of January, 1995 has not even been referred to in the reply. As the award was not referred to in the reply, obviously the learned Arbitrator did not frame any issue. While the matter was pending before the learned Arbitrator, no attempt was made to raise any plea on the basis of the award. The learned Counsel appearing for the Appellant is not in a position to point out to us that the plea that findings recorded in the previous award operate as res-judicata was raised before the learned single Judge. The previous award might have been relevant in the present proceedings only if it was the case of the Appellant that the finding recorded in that award operates as res-judicata. But that plea having admittedly not

been raised, in our opinion, the learned arbitrator and the learned single Judge were perfectly justified in ignoring the findings recorded in that award when they found that those findings were recorded in different circumstances.

4. In our opinion, considering that this is a Letter Patent Appeal and the learned Arbitrator and the learned single Judge, after appreciating the terms of the contract, have recorded a finding that the Appellant is liable to pay damages, it will not be appropriate for us to interfere with the same. The Appeal, therefore, fails and is dismissed. No order as to costs.

(D.K.Deshmukh,J.)

(J.H.Bhatia, J.)